IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6122 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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S V PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 6122 of 1990

MR MK VAKHARIA for Petitioner No. 1

MR. NC THAKORE AGP for Respondent No. 1

RESPONDENT No. 2 served

MR PJ VYAS for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/07/2001

ORAL JUDGEMENT

Heard the learned advocates.

In the year 1984, the petitioner had applied to the Gram Panchayat, village-Kharadharva, Taluka-Chanasma, District Mehsana for allotment of a piece of land, admeasuring 30 ft. x 15 ft. for construction of a residential house. The said application was considered by the Panchayat in its meeting held on 1st June, 1984 and by majority, the Resolution No. 11 was passed recommending allotment of the said vacant piece of land admeasuring 30 ft. x 15 ft. to the petitioner. Accordingly, a proposal was made to the District Development Officer, Mehsana. The District Development Officer, Mehsana under his order dated 3rd April, 1989 accepted the proposal made by the Gram Panchayat and ordered that the concerned piece of land admeasuring 450 sq.ft. be allotted to the petitioner at a price of Rs. 627.10 paise, on the terms and conditions mentioned in the said order. Feeling aggrieved, the respondent no. 3 preferred Revision Application No. 337 of 1989 before the State Government. The claim of the respondent no. 3 of being in lawful possession of the land in question was rejected by the State Government, however, the State Government was of the opinion that since the respondent no. 3 was in actual occupation of the land, the same ought not to have been granted to the petitioner and instead proceeding for eviction of the respondent no. 3 under section 61 of the Bombay Land Revenue Code ought to have been initiated. The State Government, therefore, under its order dated 24th May, 1990 set-aside the order dated 3rd April, 1989 made by the District Development Officer and directed that proceeding be initiated for eviction, under section 61 of the Bombay Land Revenue Code, against the respondent no. 3 and the petitioner's application for grant of the said land be considered afresh; after the respondent no. 3 is evicted from the said land. Feeling aggrieved, the petitioner has preferred the present petition.

On perusal of the records, it does appear that at the time the land was resolved to be granted to the petitioner ie., on 21st June, 1984, the said piece of land was vacant. However, the proposal made to the District Development Officer was considered and decided on 3rd April, 1989 ie., the matter remained pending before him for nearly five years. During the said period, the respondent no. 3 appears to have encroached upon the said land. The respondent no. 3 also instituted Suit No. 3 of 1987 before the Assistant Collector, Patan claiming that his ancestors were in possession of the land in question and he had inherited

the same from his ancestors. The said claim was rejected by the Assistant Collector under his order dated 28th February, 1989 and the respondent no. 3 was held to have encroached upon the said land. The said order was confirmed by the Collector, Mehsana on 29th December, 1989 in Land Appeal No. 23 of 1989. The matter has rested there. Hence, it is finally held that the respondent no. 3 had encroached upon the said piece of land and he has no right, title or interest over the said piece of land. It further appears that inspite of the direction issued by the State Government under the impugned order dated 24th May, 1990, the concerned authority has not taken any steps to remove the encroachment from the said piece of land nor the petitioner's application for grant of the said piece of land has been reconsidered. The approach of the Government also is quite unjust. Indisputably, the piece of land in question was vacant at the time the petitioner applied for allotment of the same and at the time the Panchayat resolved to grant the said land to the petitioner. Accordingly, the price of the land had also been determined by the District Development Officer. If pending the proceeding, the respondent no. 3 has encroached upon the said land and has continued to be in unlawful possession of the said land, the grant made to the petitioner could not have been cancelled. It was the bounden duty of the concerned authority to hand over the possession of the vacant land to the petitioner.

In the circumstances, the petition is allowed. The Collector, Mehsana or any other officer empowered to act under Section 61 of the Bombay Land Revenue Code shall evict the respondent no. 3 from the land in question, after following the due procedure, within six weeks from today. After the respondent no. 3 is so evicted, the grant of the land shall be made in favour of the petitioner in consonance with the order dated 3rd April, 1989 of the District Development Officer and the petitioner shall be put into possession of the land. Rule is made absolute. There shall be no order as to costs. Writ shall be sent forthwith. Writ be sent to the Collector, Mehsana also.

[Ms. R.M Doshit, J.]

Prakash*